IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 1103 OF 2007

Manohar Singh Balwant Singh Dhody ...Appellant

Versus

Municipal Corporation for Gr.Bombay ...Respondents

Mr. R.S.Khatib for the Appellant.

Mr. J.J.Xavier for B.M.C.

CORAM: S.K.SHAH,J.

DATE : 5th April, 2007

P.C.

1. Heard Counsel on both sides.

2. This Appeal is filed against the judgment and order passed by the City Civil Court, Mumbai, whereby the suit filed by the plaintiff was dismissed.

3. The Respondents had issued a notice dated 4.6.2003 mentioning therein that it was issued under

Section 354A of the Mumbai Municipal Corporation Act and requiring the appellant to produce evidence to show that the appellant had obtained permission for the construction he has carried on and mentioning the unauthorised construction as "Unauthorised construction of 1st floor with B.M.Walls & Ladi-coba slab". The plaintiff had pleaded before the City Civil Court that the construction was existing since last 75 years and, in any case, the work was complete. When the structure was threatened to be removed, the plaintiff filed the suit . In the suit also the allegation made by the plaintiff was that the property was in existence for more than 75 years and also raised the contentiion that the construction which was mentioned in the notice issued under section 354A was complete.

4. The trial Court had framed the issue whether the notice issued under Section 354A was legal. The trial Court held that the plaintiff has failed to produce any evidence to show that the structure was in existence since 75 years as alleged bythe plaintiff and, therefore the impugned notice was not illegal and dismissed the suit.

5. The learned Counsel for the appellant submits that the notice under Section 354A was illegal and unauthorised and that unauthorised construction was

carried on and when the construction was complete, notice should have been issued under Sectiiion 351 of the B.M.C. Act. The learned Counsel for the Respondents submits that the suit is decided on merits and that the plaintiff has failed to produce anyevidence to show that the structure was in existence sincde 75 years and it was authorised.

6. The plaintiff's allegation was that the structure was in existence for more than 75 years. Therefore, the notice requiring the appellant to produce evidence to prove construction carried on was legal.

7. Under the circumstances, I do not find any merit in the Appeal. The Appeal is, therefore, dismissed.

8. At this stage, the learne Counsel for the appellant seeks stay of the operation of this order for a period of eight weeks. The learned Counsel for the Respondents opposes the same. I am not inclined to grant any relief. The stay is rejected.

Certified copy expedited.

(S.K.SHAH,J.)